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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,879	04/14/2004	William Vanbrooks Harrison	AB-238U3	5676

23845 7590 12/15/2005

ADVANCED BIONICS CORPORATION
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EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

2646

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/823,879	Applicant(s) HARRISON ET AL.	
	Examiner HUYEN D. LE	Art Unit 2646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 1-7 and 15-20 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 8-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 1-7 and 15-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 1-7 and 15-20 drawn to an invention nonelected with traverse in Paper No. October 20, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

2. Claim 9 recites the limitation "the port" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 8 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al. (U.S. patent 5,824,022) in view of Sacherman et al. (U.S. patent 5,369,857) or Toht (U.S. patent (2,930,856).

Regarding claims 8 and 11-12, Zilberman teaches an apparatus for use with a Behind The Ear Implantable Cochlear Stimulation system that comprises a Behind The Ear (BTE) device (30, 32) of an Implantable Cochlear Stimulation (ICS) system, an In The Ear (ITE) microphone (36, 38 and see col. 5, lines 22-24) and means for electrically connecting the ITE microphone to the BTE device (figure 5).

Zilberman teaches the securing means (the stalk 36) for securing or positioning the microphone (38) in the ear. Zilberman does not specifically teach the securing means that includes at least one stiffening member as claimed. However, providing a stiffening member in a securing means or a microphone boom for adjusting the positions of a microphone is known in the art.

Sacherman or Toht teaches means for securing a microphone or a microphone boom (200 in Sacherman and 3 in Toht) that includes at least one stiffening member (figure 5 and see col. 3, lines 17-27, col. 5, lines 35-42, col. 5, lines 68-through col. 6, lines 1-3 and col. 8, lines 16-26 in Sacherman and figure 2, col. 1, lines 59-61 in Toht).

Since Zilberman does not restrict the construction and material for the securing means or microphone boom (36); it therefore would have been obvious to one skilled in the art to provide

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the securing means or the microphone boom, as taught by Sacherman or Toht, for easily bending and better adjusting the positions of a microphone.

5. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al. (U.S. patent 5,824,022) in view of Sacherman et al. (U.S. patent 5,369,857) or Toht (U.S. patent (2,930,856) as applied to claim 8 above, and further in view of Flystad (U.S. patent 3,396,245) or Groppe (U.S. patent 5,086,464).

Regarding claims 9-10, as best understood with regarding 112, 2nd as mentioned in paragraph 1, Zilbermann in view of Sacherman or Toht do not teach an earpiece of a communications handset that is held to the ear as claimed. However, providing a hearing or hearing aid device that is adapted to be utilized in connection with a communications device or a telephone handset is known in the art.

Flygstad or Groppe teaches a hearing aid for use with a telephone handset (figures 1 and 5 in Flygstad and figure 1 in Groppe).

Therefore, it would have been obvious to one skilled in the art to provide the system of Zilbermann in view of Sacherman or Toht for use in connection with a telephone handset, as taught by Flygstad or Groppe for better operating a hearing aid with a communications device.

6. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al. (U.S. patent 5,824,022) in view of Sacherman et al. (U.S. patent 5,369,857) or Toht (U.S. patent (2,930,856) as applied to claim 8 above, and further in view of Huth (U.S. patent 3,098,127) or de Vries et al. (U.S. patent 4,727,582).

Regarding claims 13-14, Zilberman in view of Sacherman or Toht teach an earhook that is removably attachable to a coaxial connector attached to the case of the BTE ICS system as claimed (figure 2 in Zilberman). Zilberman in view of Sacherman or Toht lack the teaching of a bendable and formable stalk to be connected to the ear hook. However, providing an earhook to be attached to a bendable and formable tube for positioning a transducer in the ear and for connecting a microphone to a behind-the ear device is known in the art.

Huth teaches a bendable and formable tube (8, col. 2, lines 59-60) to be attached to an ear hook (21, figure 3) of a behind-the-ear device (7) and de Vries et al. teaches a stalk (15, col. 5, lines 13-14) to be attached to an earhook (3) of a behind-the ear device.

Therefore, it would have been obvious to one skilled in the art to provide a bendable and formable stalk to be attached to the earhook of Zilberman in view of Sacherman or Toht, as taught by Huth and de Vries, for better positioning the microphone assembly to the ear of the wearer, and providing a better connection between the microphone assembly and the behind-the-ear device.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

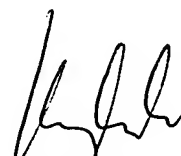
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HL

December 11, 2005



HUYEN LE
PRIMARY EXAMINER